

B-125406

NOV 4 1955

Honorable Emanuel Celler
Chairman, Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

Further reference is made to your letter of August 30, 1955, in which you request our opinion whether there is any authority for the Department of Commerce or the Business Advisory Council for the Department of Commerce to accept voluntary donations or contributions to augment regular appropriations made by the Congress to the Department of Commerce.

With your letter you enclose a copy of our decision of November 20, 1940, B-13378, which held that, while there is no authority of law for an official of the United States to accept voluntary donations or contributions of cash to augment appropriations of the Congress for a particular purpose, there would be no objection to the acceptance of the gratuitous services of a private agency, created by professional social science associations to promote and finance social science research, pursuant to a cooperative agreement under which such services would be rendered without cost to the United States except for the furnishing of such space, equipment, and facilities as the United States may be able to furnish. Also, you enclose a copy of a ruling of the Bureau of Internal Revenue holding that donations to the Council are charitable contributions, deductible for income tax purposes, under section 170 of the 1954 Code, 26 U. S. C. Supp. II, 170, and stating that since the Council is "a part of the United States Department of Commerce" it is not subject to Federal income tax nor required to file income tax returns.

A report received from the Department of Commerce in response to the inquiry mentioned in our letters of September 19 and October 20, 1955, as supplemented by other information of record, indicates that the Department of Commerce does not receive or accept any contributions for the Council and that donations to the Council are not in anywise handled by the Department of Commerce. It is further reported that the Council acts only in an advisory capacity and takes no governmental action of any kind, the Secretary of Commerce or other governmental agencies furnished the Council's reports and

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recommendations being free to accept or reject such reports. It is further reported that, except for office space and the services of two secretaries furnished by the Department of Commerce, all expenses of the Council are paid from a fund consisting of voluntary contributions made by members of the Council.

Thus, it appears no cash donations to the Council are accepted by officials of the Department of Commerce nor would they be authorized to do so. Also, while it appears that the Council has been held by Internal Revenue Service for tax purposes to be "a part of the United States Department of Commerce," its members and their expenses are not paid by the Government, they perform no Government function and are not considered employees of the United States but of the Council or of the corporations or agencies to which they are attached. Thus, while they may receive donations to carry out the functions of the Council, the amounts so received are not received or accepted by employees of the United States. It appears, therefore, that the funds are not being used to supplement funds appropriated to the Department of Commerce but rather to defray the costs of services the Council gratuitously renders to the Secretary of Commerce in the form of reports and recommendations.

Title 31, section 665, United States Code, has been referred to as possibly prohibiting acceptance by the Secretary of Commerce of the services of the Council. Such section, in pertinent part, provides:

"No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property."

However, such provision has been construed as being applicable to volunteer service not rendered pursuant to prior contract or agreed to be gratuitous and therefore likely to be the basis for a future claim. Its purpose is to prevent incurring of financial obligations over and above those authorized by the Congress. 30 Op. Atty. Gen. 51, 7 Comp. Gen. 810, 23 id. 900. Since, pursuant to agreement, the services of the Council are rendered gratuitously, the section does not preclude acceptance by the Secretary of Commerce of the Council's services. It will be noted that the situation in this regard is substantially similar to that considered in our decision of November 20, 1940, cited above.

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We trust that what is said above will serve satisfactorily to answer the inquiry raised in your letter, the enclosures to which are attached.

Sincerely yours,

JOSEPH CAMPBELL

Comptroller General
of the United States

ENCLOSURE
Comptroller General
of the United States
Enclosures

Private
Contributions